(6)

No. 87-1437

Supreme Court, U.S.
FILED
AUG 4 1988
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1987

MELVIN R. BLANTON,
MARK D. FRALEY,

Petitioners,

vs.

CITY OF NORTH LAS VEGAS,
NEVADA

Respondent.

On Writ of Certiorari to the Supreme Court of the State of Nevada

BRIEF FOR PETITIONERS

GRAVES, LEAVITT & KOCH
JOHN J. GRAVES, JR., ESQ.
601 South Sixth Street
Las Vegas, Nevada 89101
(702) 385-7277

Counsel for Petitioner
Melvin Ray Blanton

JOHN G. WATKINS, ESQ.
333 North Rancho Road,
#633
Las Vegas, Nevada 89106
(702) 646-3155

Counsel for Petitioner
Mark D. Fraley

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

F/D
53

QUESTION PRESENTED

Whether the misdemeanor offense of driving a vehicle while intoxicated under Nevada state law is a "serious" crime to which the right to jury trial applies.

PARTIES

Petitioners are MELVIN R. BLANTON, and MARK D. FRALEY, Defendants separately charged in the City of North Las Vegas, Nevada, with the misdemeanor offense of driving under the influence of intoxicating liquor, NRS 484.379; Respondent, City of North Las Vegas, is an incorporated city in the State of Nevada pursuant to 1983 Nevada Statutes Chapter 517 at 1391-1437; 1971 Nevada Statutes Chapter 573 at 1210-1229.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES	ii
TABLE OF CASES AND AUTHORITIES	iv
OPINION BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	5
ARGUMENTS	7
I. The Tests	7
II. The Penalty for Conviction of DWI in Nevada Renders the Offense Serious	9
III. Most States Allow Trial by Jury in DWI Prosecutions	17
IV. The Nature of This Offense Requires The Right to Trial by Jury	18
V. The Lower Court Decision	22
CONCLUSION	25

TABLE OF AUTHORITIES

Page

CASES

Argesinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972) 11

Baker v. City of Fairbanks, 471 P.2d 386 (Alaska 1970) 14, 22

Baldwin v. New York, 399 U.S. 66, 90 S.Ct. 1886, 26 L.Ed.2d 437 (1970) ..... *passim*

Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971) 14

Blanton v. North Las Vegas Municipal Court, 103 Nev. A.O. 135, 748 P.2d 494 (1987) 1

Brady v. Blair, 427 F.Supp. 5 (S.D. Ohio 1976) ... 14, 17, 22

Bronson v. Swinney, 648 F.Supp. 1094 (D. Nev. 1986) 14, 16, 17

Callan v. Wilson, 127 U.S. 540, 8 S.Ct. 1301, 32 L.Ed. 223 (1888) 6, 7, 22

Cheff v. Schnackenberg, 384 U.S. 373, 86 S.Ct. 1523, 16 L.Ed.2d 629 (1966) 11, 12, 22

City of Casper v. Cheatam, 739 P.2d 1222 (Wyo. 1987) 22

District of Columbia v. Clawans, 300 U.S. 617, 57 S.Ct. 660, 81 L.Ed. 843 (1937) 7, 17, 18, 21, 22

District of Columbia v. Colts, 282 U.S. 63, 51 S.Ct. 52, 75 L.Ed. 177 (1930) 6, 7, 21, 22, 23

Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968) 8, 11, 12, 13, 17

Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216, 88 S.Ct. 1472, 20 L.Ed.2d 538 (1968) 11

TABLE OF AUTHORITIES–Continued

Page

Fisher v. State, 305 Md. 357, 504 A.2d 626 (1986) 22

Frank v. United States, 395 U.S. 147, 89 S.Ct. 1503, 23 L.Ed.2d 162 (1969) 8

Holterhaus v. State, 417 S.2d 291 (Fla App 1982) 16

Landry v. Hoepfner, 818 F.2d 1169 (CA5 1987), *reversed*, 840 F.2d 1201 (CA5 1988) 17, 19

Ludwig v. Massachusetts, 427 U.S. 618, 96 S.Ct. 2781, 49 L.Ed.2d 732 (1976) 23

Muniz v. Hoffman, 422 U.S. 454, 95 S.Ct. 2178, 45 L.Ed.2d 319 (1975) 9, 13

North v. Russell, 427 U.S. 328, 96 S.Ct. 2709, 49 L.Ed.2d 534 (1976) 24

Parham v. Municipal Court, City of Sioux Falls, 199 N.W.2d 501 (SD 1972) 22

Rife v. Godbehere, 814 F.2d 563 (CA9 1987) 13

Rothweiler v. Superior Court, 100 Ariz. 37, 410 P.2d 479 (1966) 21, 22

Schick v. United States, 195 U.S. 65, 24 S.Ct. 826, 49 L.Ed. 99 (1904) 7, 22

Sellers v. Parker, 87 Fla. 181, 100 S. 260 (1924) 21

State v. Morrill, 123 N.H. 707, 465 A.2d 882 (1983) 21

State v. O'Brien, 704 P.2d 883 (Haw. 1985) 22

State v. Rodgers, 91 N.J.L. 212, 102 A. 433 (1917) 21

State v. Smith, 99 Nev. 806, 672 P.2d 631 (1983) 24

State v. Watkins, 125 Ariz 570, 611 P.2d 923 (1980) 16

TABLE OF AUTHORITIES–Continued

Page

Trop v. Dulles, 356 U.S. 86, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) 15

United States v. Arthur, 602 F.2d 660 (CA4), *cert. denied*, 444 U.S. 992, 100 S.Ct. 524, 62 L.Ed.2d 422 (1979) 15

United States v. Craner, 652 F.2d 23 (CA9 1981) 14, 17, 21, 22

United States v. Hart, 26 Fed. Cas. 193 (D.Pa. 1817) 21

United States v. Restor, 679 F.2d 338 (CA3 1982) 15

United States v. Tonry, 605 F.2d 144 (CA5 1979) 15

United States v. Woods, 450 F.Supp. 1335 (D.Md. 1978) 14, 17, 21, 22

Welsh v. Wisconsin, 466 U.S. 740, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984) 17

Whirley v. State, 450 S.2d 836 (Fla. 1984) 21

NEVADA REVISED STATUTES

3.060 24

4.370 4

5.050 4

175.481 24

189.050 4

200.080 14

200.380 13

205.060 13

266.550 4

TABLE OF AUTHORITIES–Continued

Page

266.565 4

483.460(1)(C) 10, 14

483.490(2) 10

484.379 ..... 2, 4, 9

484.3792 ..... 10, 13, 15, 16

484.381 19

484.384(3) 11

484.384(4) 10

STATE OF NEVADA CONSTITUTION

Art. 1, §3 1

Art. 5, §9 24

Art. 6, §4 4

Art. 6, §6 4

UNITED STATES CODE ANNOTATED

28 U.S.C. §1257(3) 1

FEDERAL CONSTITUTION

Art. III, §2, para. 3 ..... 2, 7

Amendment V 7

Amendment VI 1, 11

Amendment XIV 4

LAW REVIEW

Frankfurter & Corcoran, Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury, 39 Harv. L. Rev. 917 (1926) 23

TABLE OF AUTHORITIES–Continued

Page

STATISTICAL

Statistics of Department of Motor Vehicles and Public Safety, 6/30/88, provided by B.R. Vidmar, Highway Safety Representative, 555 Wright Way, Carson City, Nevada 89710 16

U.S. Department of Justice, Bureau of Justice Statistics, Report to the Nation on Crime and Justice (2nd Ed.), March 1988, MCJ 105506 ....18, 19, 20

U.S. Department of Justice, Bureau of Justice Statistics, Special Report, Drunk Driving, February 1988, NCJ 97221 19

U.S. Department of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics, 1986, NCJ 105287, Table 1.56 ..... 12, 20

OPINION BELOW

The Supreme Court of Nevada ruled that a defendant charged with the State misdemeanor offense of driving a vehicle while under the influence of an intoxicating liquor, which carries a fine of not more than $1,000, imprisonment of not more than six months in jail, as well as other penalties, has no right to trial by jury pursuant to the Constitution of the State of Nevada, Article I, § 3, or Amendment VI to the United States Constitution, *Blanton v. North Las Vegas Municipal Court*, 103 Nev. A.O. 135, 748 P.2d 494 (1987); Appendix to Petition for Writ of Certiorari, Tab "A".

JURISDICTION

Petitioners invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(3). The Supreme Court of Nevada denied Petitioners' claim of right to trial by jury in a misdemeanor DWI offense, under the federal Constitution on December 31, 1987, and the petition for writ of certiorari was docketed in this Court on February 26, 1988.

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent part of Amendment VI to the United States Constitution provides:

> (I)n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . .

The pertinent part of Amendment XIV to the United States Constitution provides:

> (N)or shall any state deprive any person of life, liberty, or property witnout due process of law . . .

Article III, Section 2, paragraph 3 provides, in pertinent part:

> The Trial of all Crimes, except in Cases of Impeachment, shall be by jury; . . .

STATEMENT OF THE CASE

Melvin R. Blanton

Blanton was arrested for driving a vehicle while under the influence of intoxicating liquor (no accident) on July 18, 1986 in the City of North Las Vegas, Nevada. Probable cause for the stop consisted of varying speeds and several crossings of the lane divider by Blanton's car. An odor of alcoholic beverage about his person, red and bloodshot eyes, and the officer's belief that he failed the field sobriety test, led to Blanton's incarceration, and the drawing of blood to determine the blood-alcohol level.

Defendant was arraigned through counsel on August 19, 1986, entering a plea of not guilty to the charge of D.U.I., NRS 484.379 (first offense). (J.A. 1) Written demand for jury trial was made on October 3, 1986, (J.A. 6-7) to which demand the City interposed written objection. (J.A. 7-10) The demand was later denied by the Municipal Court Judge.

A pre-trial petition for writ of mandamus was filed on November 3, 1986, in the Eighth Judicial District Court

in and for the County of Clark, State of Nevada, a court of general jurisdiction. (J.A. 13-16) The City of North Las Vegas again filed an answer and a legal memorandum opposing the granting of the writ. (J.A. 18-20) District Court Judge Michael Wendell denied the writ on January 14, 1987, (J.A. 20-21) and an appeal was filed by Blanton to the Supreme Court of the State of Nevada on January 20, 1987. (J.A. 21-23)

After Blanton's appeal and other cases were consolidated in the state Supreme Court on the basis of the common issue of a jury trial in misdemeanor D.U.I. prosecutions, the appeal was briefed, culminating in oral argument in Carson City, Nevada on September 18, 1987. (J.A. 5) The Supreme Court of Nevada rendered its Decision, per Justice Gunderson, on December 31, 1987, denying Blanton, and the Defendants in the other consolidated cases, the option of a jury trial; the Decision was based upon the State of Nevada and Federal Constitutions.

A timely petition for writ of certiorari was thereafter docketed in this Court by Blanton on February 26, 1988; this petition was granted on June 20, 1988. (J.A. 102)

Mark D. Fraley

Fraley was arrested for driving a vehicle while under the influence of intoxicating liquor on June 29, 1986 in the City of North Las Vegas, Nevada. Probable cause for this stop consisted of the arresting officer's observation of Fraley's vehicle (at low speed) striking a traffic-control device. A moderate odor of alcoholic beverage about his person, bloodshot and watery eyes, and the officer's opinion that he failed the field sobriety test, led to Fraley's incarceration. Fraley refused a chemical test.

Defendant was arraigned on July 15, 1986, entering a plea of not guilty to the charge of driving under the influence of intoxicating liquor, NRS 484.379 (first offense). (J.A. 1) Written demand for jury trial was made (J.A 11), which demand was denied by the Municipal Court Judge on October 28, 1986. (J.A. 1) Fraley entered a plea of guilty to the charge of D.U.I. on October 29, 1986 (J.A. 1), and received a fine of $300, five (5) days incarceration, and mandatory alcohol education school. Appeal was timely taken to the Eighth Judicial District Court in and for the County of Clark, State of Nevada, a court of general jurisdiction, for a trial *de novo*, pursuant to NRS 266.565.[1] (J.A. 16-17) Demand for jury trial was also filed in that court by Defendant (J.A. 23-25), and the City of North Las Vegas opposed the same. District Court Judge Addelair Guy ruled on January 30, 1987, that the North Las Vegas Municipal Court must grant a jury trial to Fraley, and further ruled that NRS 266.550 (precluding municipal courts from conducting jury trials) was unconstitutional. (J.A. 25-27)

---

[1] Misdemeanor offenses, including DWIs are prosecuted in either Municipal (City) Courts (NRS 5.050) or Justice (County) Courts (NRS 4.370). A defendant convicted after trial or after plea of guilty in City court may appeal to the local District Court for a trial *de novo*. NRS 266.565. A defendant convicted after trial in Justice Court (a court of record) may appeal to the District Court where trial errors are challenged in briefs as in normal appellate cases. NRS 189.050. A party aggrieved at the District Court level in a misdemeanor offense may only bring an issue before the Supreme Court of Nevada by extraordinary writ, as only cases originating in District Courts may appeal as of right. Constitution, Article 6, §§ 4 and 6. There is no intermediate court of appeal in the State of Nevada.

The City of North Las Vegas, Nevada filed an original petition for writ of certiorari in the Supreme Court of the State of Nevada on April 13, 1987. (J.A. 28-52) That case was consolidated in the Supreme Court of Nevada with other cases (including Petitioner Blanton's herein) on the basis of the common issue of jury trial in misdemeanor DWI prosecutions. (J.A. 4-5) The matter was briefed, and oral argument took place in Carson City, Nevada on September 18, 1987. (J.A. 5) The Supreme Court of Nevada rendered its Decision, per Justice Gunderson, on December 31, 1987, granting the City's writ and thereby denying Fraley, and the defendants in the other consolidated cases, the option of a jury trial in misdemeanor DWI prosecutions.

A timely joint petition for writ of certiorari was filed in this Court with Melvin R. Blanton; this petition was granted on June 20, 1988. (J.A. 103)

SUMMARY OF ARGUMENT

This Court has previously set out a "bright line" test of 6 months incarceration and a $500 fine to separate petty from serious offenses as regards the right to trial by jury. Nevada's Driving While Intoxicated (hereinafter "DWI") law carries a potential 6 month sentence and a $1,000 fine, but also carries a host of other penalties that "pack" the offense "below the line". These penalties include mandatory minimum incarceration and fine, community service in lieu of incarceration with the defendant dressed in distinctive garb identifying him as a DWI offender, a mandatory alcohol educational course

paid by the defendant, and a mandatory 90-day driver's license revocation. A second offense within 7 years carries increased minimum jail time and fine, and a third conviction is a felony carrying 1 year mandatory in the Nevada State Prison and a large minimum fine. The convicted person is stigmatized as a convicted drunk driver, and automobile insurance rate hikes routinely follow. These serious penalties mandate a right to trial by jury in a first-offense DWI prosecution.

The "National standard" test approved most recently in *Baldwin v. New York*, 399 U.S. 66, 70, 90 S.Ct. 1886, 1889, 26 L.Ed.2d 437 (1970) allows trial by jury in DWI. Our research indicates 46 States which allow a jury trial, with 4 States and the District of Columbia denying.

The "nature of the offense" test first used in *Callan v. Wilson*, 127 U.S. 540, 8 S.Ct. 1301, 32 L.Ed. 223 (1888), reaffirmed in *District of Columbia v. Colts*, 282 U.S. 63, 51 S.Ct. 52, 75 L.Ed. 177 (1930), and more recently approved in *Baldwin v. New York, supra*, 399 U.S. at 69, 90 S.Ct. at 1888, n.6, defines DWI as a "serious" offense. In the last 10 years the intoxicated driver has been spotlighted by national groups as a menace. Statutory punishments have increased, including alcohol treatment and education, driver's license sanctions, and community service. Our society views drunk driving as a serious criminal offense. In addition, several federal and state courts have held that DWI is a malum in se offense, and thereby "serious".

These 3 tests, separately and considered together, undeniably require a trial by jury in a DWI case in Nevada. Petitioners seek no new rule for this offense before this Court. DWI is, however, an offense that our

society has now singled out for harsh penalty. The "bright line" penalty-based rule of 6 months and a $500 fine is so intensely bright that it has eclipsed other well-grounded rules used to evaluate the right to trial by jury, thereby retarding the recognition of DWI as a "serious" offense by lower courts.

ARGUMENTS

I

THE TESTS

In *Callan v. Wilson*, 127 U.S. 540, 555 (1888), this Court declared that the crime of conspiracy was a "criminal and indictable offense" at common law and an offense of a grave character affecting the public at large. Pursuant to Art. 3 of the federal Constitution, and Amendments V and VI thereof, it was held that the "nature of the crime" of conspiracy secured to the defendant the right to trial by jury. Sixteen years later, in *Schick v. United States*, 195 U.S. 65, 24 S.Ct. 826, 49 L.Ed. 99 (1904), a maximum penalty of $50 for a violation of the Oleomargarine Act was found not to warrant trial by jury due to the small penalty and the nature of the offense. *District of Columbia v. Colts*, 282 U.S. 63, 51 S.Ct. 52, 75 L.Ed. 177 (1930) granted a trial by jury for the offense of "reckless driving", carrying a $25 to $100 fine, and minimum jail time of 10 days not to exceed 30. The offense was found to be malum in se and indictable at common law. A scant 7 years later, in *District of Columbia v. Clawans*, 300 U.S. 617, 57 S.Ct. 660, 81 L.Ed 843 (1937), an offense of selling personalty without a business license which carried a

penalty of as much as a $300 fine and 90 days in jail was found not triable to a jury. Neither the penalty nor the nature of the offense was deemed serious enough to warrant trial by jury. *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968), applied the federal Sixth Amendment to the States through the Fourteenth Amendment, and held that 2 years potential imprisonment entitled the defendant to a jury trial. Incarceration of up to 6 months was found not to require a jury trial if the crime otherwise qualified as a petty offense. 391 U.S. at 159, 88 S.Ct. at 1453. This Court also observed:

> But the penalty authorized for a particular crime is of major relevance in determining whether it is serious or not and may in itself, if severe enough, subject the trial to the mandates of the Sixth Amendment. . . .The penalty authorized by the law of the locality may be taken "as a gauge of its social and ethical judgments." *Id.*

And at 391 U.S. 161, 88 S.Ct. 1453:

> In determining whether the length of the authorized prison term *or the seriousness of other punishment* is enough in itself to require a jury trial, we are counseled by District of Columbia v. Clawans, supra, to refer to objective criteria, chiefly the existing laws and practices in the Nation. (Emphasis added).

Baldwin v. New York, 399 U.S. 66 (1970), established the "bright line" test of 6 months incarceration or less to deny the right to jury trial. Recognizing that the most relevant criterion is the severity of the maximum authorized penalty, *Frank v. United States*, 395 U.S. 147, 148, 89 S.Ct. 1503, 1505, 23 L.Ed.2d 162 (1969), and thereby applying State practices (objective criteria), a jury trial for a potential 1 year jail sentence was required. No new

analytical framework was developed. This Court, at n.6, 399 U.S. 69, 90 S.Ct. 1888, first sentence, reiterates the "nature of the offense" test, and in the second sentence, announces that " . . . we decide only that a potential sentence in excess of six months' imprisonment is sufficiently severe *by itself* to take the offense out of the category of 'petty'. . . ." (Emphasis added).

See, *Muniz v. Hoffman*, 422 U.S. 454, 95 S.Ct. 2178, 45 L.Ed.2d 319 (1975).

A distillation of these cases illustrates 3 frameworks from which the right to trial by jury springs:

1) the nature of the offense;

2) the potential penalty or punishment; and,

3) the Nation's judgment, i.e., objective criteria existing in the laws and practices in the Nation.

In the case at bar, petitioners seek to isolate one special offense which has gained the Nation's attention and wrath over the last 10 years. The offense of driving while intoxicated will be shown to be "serious" when viewed from any of the 3 perspectives above.

II

THE PENALTY FOR CONVICTION OF DWI IN NEVADA RENDERS THE OFFENSE SERIOUS

It is unlawful in the State of Nevada to drive a vehicle on a highway or on premises to which the public has access while under the influence of intoxicating liquor, or for the driver to have 0.10 percent or more by weight of alcohol in his blood. NRS 484.379. The offense is a misdemeanor carrying a fine of as much as $1,000

and 6 months incarceration in the county jail. NRS 484.3792. In 1986, the year of the arrests herein, the following statutory consequences (NRS 484.3792) were evident for a first offense conviction:

1) A fine of no less than $200 or more than $1,000

2) Imprisonment for not less than 2 days or more than 6 months which is non-probationable or suspendable, or to perform 48 hours of community service while dressed in distinctive garb identifying the person as a DWI violator

3) An educational course on alcohol abuse and controlled substances at the expense of the defendant

4) The offense is non-negotiable for the prosecuting attorney unless the charge is not supported by probable cause or cannot be proved at trial

5) A second offense of DWI within 7 years is a misdemeanor carrying a minimum of 10 days incarceration and a fine of not less than $500

6) A third or subsequent offense within 7 years is a felony punishable by no less than 1 year or more than 6 years in prison, and a fine of no less than $2,000 to $5,000. The offender, if practicable, must be assigned to a minimum security facility.

Additionally, NRS 483.460(1)(c) requires mandatory driver's license revocation upon conviction for 90 days; only after 45 days of that period is served may the State issue a restricted license for work, or for obtaining food and medical supplies if the driver can show a "severe hardship". NRS 483.490(2). NRS 484.384(4) allows a

reduction of this period by any period of revocation previously imposed by the Department of Motor Vehicles for the driver having had 0.10% or more by weight of alcohol in his blood at the time of arrest. NRS 484.384(3). Property interests of the convicted person are affected, as automobile insurance premiums invariably increase (usually double or triple).

Lastly, the individual must bear the social stigma of being a convicted drunk driver. *Argesinger v. Hamlin*, 407 U.S. 25, 48, 92 S.Ct. 2006, 2019, 32 L.Ed.2d 530 (1972).

In *Baldwin v. New York*, 399 U.S. 66, 69, 90 S.Ct. 1886, 1988, n.6, 20 L.Ed.2d 437 (1970), this Court stated that " . . . we decide only that a potential sentence in excess of six months' imprisonment is sufficiently severe by itself to take the offense out of the category of 'petty'." A six-month penalty has been held to be short enough to classify the offense as "petty". *Dyke v. Taylor Implement Mfg. Co.*, 391 U.S. 216, 220, 88 S.Ct. 1472, 1475, 20 L.Ed.2d 538 (1968); *Cheff v. Schnackenberg*, 384 U.S. 373, 86 S.Ct. 1523, 16 L.Ed.2d 629 (1966). This Court has never held that the right to trial by jury does not attach to an offense which carries a potential jail term of 6 months or less, which is otherwise considered "serious"; indeed, the Court recognized in *Baldwin*, 399 U.S. at 68, 90 S.Ct. at 1888, that " . . . the task before us in this case is the essential if not wholly satisfactory one, . . . of determining the line between 'petty' and 'serious' for the purposes of the Sixth Amendment right to jury trial." The unsatisfactory process of definition of " . . . the boundaries of the petty offense category have always been ill-defined, if not ambulatory." *Duncan v. Louisiana*, 391 U.S. at 160, 88

S.Ct. at 1453. Rules defining petty offenses are dynamic, changing with need, as at common law.

Petitioners in this case do not seek a new "bright line" test. What they do seek is a right to trial by jury on a special offense that has been winnowed from the petty offense category and specially punished. This Court recognized the existence of such crimes in *Duncan, supra,* 391 U.S. at 159-60, 88 S.Ct. at 1453, " . . . Crimes carrying possible penalties up to six months do not require a jury trial *if they otherwise qualify as petty offenses, Cheff v. Schnackenberg,* 384 U.S. 373, 86 S.Ct. 1523, 16 L.Ed.2d 629 (1966) . . . " (Emphasis added). And at 384 U.S. 161, 88 S.Ct. 1453:

> In determining whether the length of the authorized prison term *or the seriousness of other punishment* is enough in itself to require a jury trial, we are counseled by District of Columbia v. Clawans, supra, to refer to objective criteria, chiefly the existing laws and practices in the Nation. (Emphasis added).

The *Duncan* decision looked no further than the length of the sentence, but the words "other punishment" have independent vitality, and anticipate the possibility of an offense "serious" by a measure other than length of sentence. As in *Baldwin,* this Court must compare Nevada's punishment of DWI with other States. January, 1986 statistics indicate that Nevada's punishments for DWI are as stringent as, or more stringent than, other States in the nation. Appendix "B" hereof.[2] Indeed, Appendix "A"

---

[2] U.S. Department of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Standards, 1986, NCJ 105287, Table 1.56

hereof indicates by asterisk that 21 States (by our count) punish DWI by a potential sentence of 1 year or more; further, 46 States allow jury trials in DWI prosecutions.

In terms, then, of Nevada's punishment for DWI (which is commensurate with the Nation), and Nevada's deprivation of a right to trial by jury (which is not commensurate with the Nation), the *Baldwin* case is persuasive authority.

FINE: In reviewing Nevada's potential and mandatory punishment for DWI (NRS 484.3792), the maximum fine by itself may be enough to trigger a right to trial by jury. The case of *Rife v. Godbehere,* 814 F.2d 563 (CA9 1987) ruled that a State habeas petitioner convicted of a misdemeanor and fined $1,000 had a federal constitutional right to trial by jury. *Muniz v. Hoffman,* 422 U.S. 454, 95 S.Ct. 2178, 45 L.Ed.2d 319 (1975), was distinguished on the basis that the contemnor was a labor union, a "non-individual." As stated in *Muniz,* 422 U.S. at 476-77, 95 S.Ct. 2190-91, this Court has not accorded the six-month incarceration and $500 fine boundaries "talismanic significance." However, the potential fine in the case at bar ($200 of which is mandatory) as well as a potential six-month jail sentence moves DWI to the "serious" category, at least as defined by *Duncan* and *Baldwin.*

MANDATORY INCARCERATION: Although Nevada's penalty of 6 months' incarceration or less after a DWI conviction is within the *Baldwin* boundary, 2 days of that period cannot be suspended. Far more serious felony crimes in Nevada are probationable with no mandatory jail time (e.g., robbery, NRS 200.380; burglary, NRS

205.060; voluntary manslaughter, NRS 200.080). See, *Bronson v. Swinney*, 648 F.Supp. 1094, 1099 (D.Nev. 1986). This is a clear indication that the citizens of Nevada, through their legislators, consider DWI a "serious" crime. Only 16 States have mandatory minimum incarceration on first conviction DWI. See Appendix "B" hereof.

MANDATORY LOSS OF DRIVER'S LICENSE: NRS 483.460(1)(c) requires a 90-day loss of driving privileges upon conviction of DWI. This Court stated in *Bell v. Burson*, 402 U.S. 535, 539, 91 S.Ct. 1586, 1589, 29 L.Ed.2d 90 (1971) that:

> Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.

Other courts have conceded the right to trial by jury partly on the basis of the potential loss of a driver's license. *United States v. Craner*, 652 F.2d 23 (CA9 1981); *United States v. Woods*, 450 F.Supp. 1335, 1346 (D.Md. 1978); *Brady v. Blair*, 427 F.Supp. 5, 10 (S.D. Ohio 1976); *Bronson v. Swinney, supra*, 648 F.Supp. at 1099; *Baker v. City of Fairbanks*, 471 P.2d 386 (Alaska 1970).

48 HOURS OF COMMUNITY SERVICE DRESSED IN DISTINCTIVE GARB: An individual convicted in North Las Vegas may choose to perform 48 hours (6-8 hour days) of community service wearing a "convict-striped" black and white pullover shirt with a large white circle on the back. Within the circle is a drawing of a liquor bottle with a prominent skull and crossbones on the label. The

bottle is surrounded by a red circle with a red line through the middle (similar to a "no smoking" sign). Between the border of the red circle and the edge of the greater white circle are the initials "D.U.I." at the top and "OFFENDER" at the bottom (the matching pants to this outfit, for some reason, are no longer worn). Community service is performed in lieu of 2 days of jail time. Community service is a proper condition of probation, *United States v. Arthur*, 602 F.2d 660, 664 (CA4), *cert. denied*, 444 U.S. 992, 100 S.Ct. 524, 62 L.Ed.2d 422 (1979), " . . . so long as it is reasonably related to rehabilitation of the probationer, . . . deterrence of future misconduct by the probationer or general deterrence of others, (or) deserved punishment." *United States v. Tonry*, 605 F.2d 144, 148 (CA5 1979). See also *United States v. Restor*, 679 F.2d 338 (CA3 1982). Even assuming that community service is non-penal and that the "garb" will deter others, it is clearly punishment to the offender and "marks" him to the public at large over an extended period as a convicted DWI offender. Such extraordinary punishment is unique in Nevada, and perhaps in the Nation, indicating again how "serious" the crime is considered.

If a page from Eighth Amendment lore may be contrasted, " . . . Fines, imprisonment and even execution may be imposed depending upon the enormity of the crime, but any technique outside the bounds of those traditional penalties is constitutionally suspect. . . . " *Trop v. Dulles*, 356 U.S. 86, 100, 78 S.Ct. 590, 598, 2 L.Ed.2d 630 (1958).

NO NEGOTIATION: The prosecutor cannot negotiate the DWI offense. NRS 484.3792(3). This plea-bargain straitjacket is rare, *Bronson v. Swinney, supra*, 648 F.Supp.

at 1099, and of all the provisions here set out, this one forces a plea, or a trial to the judge. Nevada's conviction rate in 1987 was 82% (9,722 persons arrested and 8,001 convicted by plea or trial).[3]

SUCCESSIVE OFFENSES: A minimum period of incarceration of 10 days for a second conviction within 7 years, without a jury, and a felony conviction carrying 1 to 6 years imprisonment (1 year of which is not suspendable) for a third conviction within 7 years, reflect the seriousness of a single misdemeanor conviction of DWI in Nevada.

ALCOHOL EDUCATION: Alcohol education has been held a proper condition of probation, *Holterhaus v. State*, 417 S.2d 291 (Fla. App. 1982), *State v. Watkins*, 125 Ariz. 570, 611 P.2d 923 (1980). Here, however, the defendant must pay the cost of the program himself (about $175). NRS 484.3792(1)(a)(1).

The punishment contained in and collateral to the misdemeanor DWI statute in Nevada in 1986 is harsh; a person charged with this crime should have the option of a trial by jury. For this Court to allow such punishment to go unanswered will encourage legislatures to "pack" petty offenses with penalties that do not puncture the 6-month incarceration line, and to simultaneously deny the right to trial by jury.

---

[3] Statistics of Department of Motor Vehicles and Public Safety, 6/30/88, provided by B.R. Vidmar, Highway Safety Representative, 555 Wright Way, Carson City, Nevada 89710.

III

MOST STATES ALLOW TRIAL BY JURY IN DWI PROSECUTIONS

Appendix "A" hereof indicates that 46 State jurisdictions allow a jury trial in first-offense DWI prosecutions if not in the first instance, then on appeal. The District of Columbia, Louisiana, New Jersey, New Mexico, and Nevada do not.

This Court first compared State imprisonment patterns in *District of Columbia v. Clawans*, 300 U.S. 617, 57 S.Ct. 660, 81 L.Ed. 843 (1937) in determining that a maximum fine of $300 and 90 days' imprisonment (as well as the "moral quality" of the offense) did not trigger a right to trial by jury. A similar analysis was used in *Duncan v. Louisiana*, 391 U.S. 145 (1968) and *Baldwin v. New York*, 399 U.S. 66 (1970).

Since the "bright line" test of 6 months' incarceration and a $500 fine has been established for almost 20 years now, some lower federal courts have analyzed the issue in terms of numbers of State jurisdictions allowing trial by jury in DWI prosecutions, instead of State patterns of potential incarceration. *United States v. Craner*, 652 F.2d 23, 27 (CA9 1981); *United States v. Woods*, 450 F.Supp. 1335, 1347 (D.Md. 1978) (federal regulation); *Brady v. Blair*, 427 F.Supp. 5, 10 (S.D. Ohio 1976) (city ordinance); *Landry v. Hoepfner*, 840 F.2d 1201, 1217 (CA5 1988), *en banc*, (no right to jury trial in Louisiana DWI offense); *Bronson v. Swinney*, 648 F.Supp. 1094 (D. Nev. 1986) (trial by jury mandated). See *Welsh v. Wisconsin*, 466 U.S. 740, 763, 104 S.Ct. 2091, 2104, 80 L.Ed.2d 732 (1984) (White, J., dissenting joined by Rehnquist, J.) where two members of

this Court (albeit in a fourth amendment setting) analyzed the "seriousness" of the Wisconsin DWI law in terms of the right to trial by jury, among other factors. In the DWI prosecution, of course, this approach is justified because most State jurisdictions allow a trial by jury no matter the penalty.

At least since the *Clawans* decision, *supra*, this Court appears to have sought National uniformity in the jury trial area. To hold that a defendant in a DWI prosecution has a right to trial by jury will continue that needed uniformity.

IV

THE NATURE OF THIS OFFENSE REQUIRES THE RIGHT TO TRIAL BY JURY

The vast majority of States define driving while intoxicated as driving under the influence of intoxicating liquor, or driving while having 0.10% or more by weight of alcohol in the blood (0.10% is considered to be legal intoxication in 39 States and the District of Columbia, 0.08% in 2 States, 0.12% in 1 State, and 0.15% in 1 State; the other 7 States have a presumptive level of 0.10% where the defense can rebut the presumption).[4] In Nevada, the level of 0.10% or more is presumptive of DWI, while being under the influence of intoxicating liquor is more a factor of improper driving, facts drawn from a

---

[4] U.S. Department of Justice, Bureau of Justice Statistics, Report to the Nation on Crime and Justice (2nd Ed.), March 1988, MCJ 105506, p.7.

field-sobriety test, and observation of the driver. An individual may, for example, be prosecuted for DWI with a level of 0.08% blood alcohol (no presumption) when his driving or the factual results of a field-sobriety test indicate intoxication. Cf., NRS 484.381.

Nationwide, in 1985, there were 1,788,400 non-juvenile arrests for DWI, which constituted 15% of all arrests in that year.[5] It is estimated that 40% of the 43,800 traffic-related deaths in the United States in 1985 involved a blood-alcohol level that exceeded the legal limit[6], and in 1986 more than 650,000 persons were injured in alcohol-related motor vehicle crashes.[7] It has been estimated that property damage, medical costs, and other costs of drunk driving may exceed $24 billion annually.[8] More significantly, between 1970 and 1986 DWI arrests increased nearly 223%, while the number of licensed drivers increased by 42%.[9]

In the past few years, national organizations such as Mothers Against Drunk Driving (MADD) whose membership is now claimed at 600,000 with 400 chapters, *Landry v. Hoepfner*, 818 F.2d 1169, 1176 n.3 (CA5 1987), and Students Against Drunk Driving (SADD) have extensively publicized the individual and societal costs of drunk driving. Their efforts have brought this message

---

[5] Report to the Nation on Crime and Justice, *supra*, at 67 and 40.

[6] Id., at 7.

[7] U.S. Department of Justice, Bureau of Justice Statistics, Special Report, Drunk Driving, February 1988, NCJ 97221, p.1.

[8] Id.

[9] Id.

via informational spots in movie houses, television and radio, on billboards, and by telephone, especially during holiday seasons when overindulgence is common. Most States, including Nevada, have implemented sobriety checkpoints to deter drunk driving in problem areas. Twelve States have passed "happy hour" legislation which limits the sale of alcoholic beverages in quantity for a reduced price during certain hours.[10] In 1986, 16 States imposed mandatory imprisonment for first conviction DWI, 42 States for a second conviction, and 40 States for a third conviction; 25 States required mandatory license suspension or revocation for a first conviction, 44 States for a second conviction, and 44 States for a third conviction.[11] Thirty-two States permit or require community service of some type upon conviction, with 47 States permitting or requiring alcohol education or treatment programs.[12] A local paper, the Reno Gazette-Journal, every few days, runs the names, addresses, and punishments of persons convicted of DWI, even reporting plea negotiations to lesser charges (see Wednesday, June 22, 1988 ed., p.2C). At least one bill is pending in the United States Senate, sponsored by Sen. Frank Lautenberg, D-N.J., which would appropriate more federal money to States which toughen their drunk driving laws.

Appendices "C" and "D" hereof show, respectively, the numbers of jury trials in misdemeanor cases in reporting States in 1985, and numbers of jury trials in DWI/DUI cases in reporting State courts in 1985. These

---

[10] Report to the Nation on Crime and Justice, *supra*, at 7.

[11] Id., at 94.

[12] Id., Sourcebook of Justice Statistics, Table 1.56.

statistics bear out similar statistics set out in *Baldwin v. New York*, 399 U.S. 66, 75, n.22, 90 S.Ct. 1886, 1891, 26 L.Ed.2d 437 (1970), that there will be a high waiver rate of jury trials in these types of cases. With these societal dynamics as a backdrop, does the very nature of the offense of DWI bring it within the constitutional guarantee of trial by jury?

There is respectable authority for the proposition that DWI was not an offense indictable at common law. *State v. Rodgers*, 91 N.J.L. 212, 102 A. 433 (1917); *Whirley v. State*, 450 S.2d 836, 838 (Fla. 1984); *State ex rel. Sellers v. Parker*, 87 Fla. 181, 100 S. 260 (1924); *State v. Morrill*, 123 N.H. 707, 465 A.2d 882, 885 (1983); *Rothweiler v. Superior Court*, 100 Ariz. 37, 410 P.2d 479 (1966). But see, *United States v. Hart*, 26 Fed. Cas. 193 (D.Pa. 1817). First, DWI as we know it was not known to the common law, and comparison to a drunk equestrian or driver of a wagon and team is not congruent with the automobile's high speed and the congested conditions of our time. *United States v. Craner*, 652 F.2d 23, 26 n.3 (CA9 1981). DWI, with its attendant mischief, would clearly have been indictable at common law. Second, the factor of "indictable at common law" seems to have been abandoned by this Court. Last mentioned in *District of Columbia v. Colts*, 282 U.S. 63 (1930), along with the "nature of the offense" test, 282 U.S. 73, it was not found to be a relevant consideration in *District of Columbia v. Clawans*, 300 U.S. 617, 625 (1937) where penalty only was considered, and it was not mentioned as a part of the "nature of the offense" test in *Baldwin v. New York, supra*, 399 U.S. 69, 90 S.Ct. 1888, n.6; *United States v. Woods*, 450 F.Supp. 1335, 1342 (D.Md. 1978).

In *Callan v. Wilson*, 127 U.S. 540 (1888) this Court described a "conspiracy" as " . . . an offense of a grave character, affecting the public at large; . . . " 127 U.S. 556. A violation of the Oleomargarine Act of 1901 carrying a fine of $50 involved no moral delinquency, and therefore no trial by jury was required. *Schick v. United States*, 195 U.S. 65 (1904). And the crime of reckless driving was found to be an offense malum in se to which a right to jury trial attached. *District of Columbia v. Colts, supra.*

The offense of DWI has been held to be one malum in se and an act repugnant to the moral sense of the community. *Rothweiler v. Superior Court of Pima County, supra; State v. O'Brien*, 704 P.2d 883 (Haw. 1985); *Baker v. City of Fairbanks*, 471 P.2d 386 (Alaska 1970); *Fisher v. State*, 305 Md. 357, 504 A.2d 626 (1986); *Parham v. Municipal Court, City of Sioux Falls*, 199 N.W.2d 501 (SD 1972); *City of Casper v. Cheatam*, 739 P.2d 1222 (Wyo. 1987); *United States v. Craner, supra; Brady v. Blair*, 427 F.Supp. 5 (S.D. Ohio 1976); *United States v. Woods, supra.*

In sum, the offense of DWI is one malum in se to which a right to trial by jury attaches; any requirement that the offense be indictable at common law seems to have been abandoned in 1937 in *Clawans, supra.*

V

THE LOWER COURT DECISION

The Decision of the Nevada Supreme Court in this case boils down to a strict reading and reaffirmation of the *Baldwin*, standard, and a reluctance to transcend that standard. See, *Cheff v. Schnackenberg*, 384 U.S. 373, 86 S.Ct. 1523, 16 L.Ed.2d 629 (1966). The lower court felt that this

Court had retreated from the *Colts, supra*, decision where the "nature of the offense" was of primary concern, and had moved instead to a more workable rule based on potential penalties. The court listed the following policy considerations in support of the denial of right to trial by jury:

1) Bench trials are speedy and inexpensive.

The right to trial by jury has never turned on these considerations. Summary adjudications for petty offenses are proper, as the acts " . . . (do) not offend too deeply the moral purposes of the community, . . . , and (are) stigmatized by punishment relatively light . . . ."[13] But cost is never a consideration if the offense is serious.

2) The cost to jurors in time and money, and procedures for summons and selection of jurors in municipal court.

Other rural, thinly-populated States, e.g., North and South Dakota, and Wyoming, grant trial by jury. The lower court further speculates that jury duty for citizens in outlying areas may be onerous. But this duty is as onerous for felony trials as well. The court's further fear that municipal and justice courts will adjudicate DWI jury trials may be groundless, as the jury trial will occur, no doubt by legislation, in District Court, the court of general jurisdiction. See, *Ludwig v. Massachusetts*, 427 U.S. 618, 96 S.Ct. 2781, 49 L.Ed.2d 732 (1976).

---

[13] Frankfurter & Corcoran, Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury, 39 Harv.L.Rev. 917, 981 (1926).

3) Other misdemeanor crimes are as opprobrious as the DWI.

The court's cited offenses of indecent conduct and lewd behavior are indeed vile and despicable, but they are not "serious" in the constitutional sense so as to require trial by jury.

4) Concern for number of jurors.

The numbers of jurors in municipal or justice court in a prosecution would be a legislative decision at a special meeting of the legislature. Constitution, Art. 5, § 9. If DWI jury trials occur in the District Court, a 12-person jury will sit and the verdict will have to be unanimous. NRS 175.481.

5) The lower court's concern with non-lawyer judges presiding over DWI prosecutions.

First, if the jury trials are conducted in the District Court all judges are licensed attorneys. See NRS 3.060. Second, this Court has held that the " . . . concern in prior cases with judicial functions being performed by nonjudicial officers has also been directed at the need for independent, neutral, and detached judgment, not at legal training . . . ". *North v. Russell*, 427 U.S. 328, 96 S.Ct. 2709, 49 L.Ed.2d 534 (1976).

6) The right to trial by jury is a legislative decision.

Leaving the issue to the Nevada legislature to resolve does not satisfy constitutional needs. This issue has been around since at least *State v. Smith*, 99 Nev. 806, 672 P.2d 631 (1983) and the State legislature has done nothing but make the penalties more severe without a

concomitant move to protect the integrity of the adjudicative process with trial by jury.

CONCLUSION

Wherefore, for the foregoing reasons, petitioners pray that the judgment below be reversed.

Respectfully submitted:

JOHN G. WATKINS

JOHN G. WATKINS, ESQ.
333 North Ranch Road, #633
Las Vegas, Nevada 89106

(702) 646-3155

Attorney for Petitioner
MARK D. FRALEY

GRAVES, LEAVITT & KOCH

JOHN G. GRAVES, JR., ESQ.
601 South Sixth Street
Las Vegas, Nevada 89101

(702) 385-7277

Attorney for Petitioner
MELVIN RAY BLANTON

APPENDIX "A"

STATES ALLOWING TRIAL BY JURY IN DWI PROSECUTIONS AT SOME LEVEL

* denotes 1 year possible jailtime or more
** denotes jury trial by court decision

1)	*Alabama	:	D.W.I. – Code of Alabama §32-5A-191 Jury Trial – Code of Alabama §15-14-30; *Hose v. State*, 489 So.2d 670 (Ala. Cr. App. 1986), *cert. denied*, 5/23/86 by Supreme Court of Alabama.
2)	*Alaska	:	D.W.I. – A.S. §28-35.030 Jury Trial – *Baker v. City of Fairbanks*, 471 P.2d 386 (Alaska 1970).
3)	**Arizona	:	D.W.I. – A.R.S. §28-692 Jury Trial – *Rothweiler v. Superior Court of Pima County*, 410 P.2d 479, 100 Ariz. 37 (1966).
4)	*Arkansas	:	D.W.I. – Arkansas Code §5-65-103 Jury Trial – Constitution, Declaration of Rights, Art. 2, §10.
5)	California	:	D.W.I. – Veh. Code §23152 Jury Trial – Constitution, Art. 1, §16; Code of Civil Procedure §194.
6)	*Colorado	:	D.W.I. – C.R.S. 42-4-1202 Jury Trial – Constitution, Bill of Rights, Art. II, §23; C.R.S. §16-10-109.

7) Connecticut : D.W.I. – G.S.A. §14-227a
Jury Trial – Constitution, Declaration of Rights, Art. 1, §8; G.S.A. §54-82b; *State of Englehart*, 256 A.2d 231, 158 Conn. 117 (1969).

8) Delaware : D.W.I. – D.C.A. 21 §4177
Jury Trial – Constitution, Bill of Rights, Art. 1, §7; *Coxe v. State*, Del. Supr., 281 A.2d 606 (1971).

9) Florida : D.W.I. – F.S.A. §316.193
Jury Trial – F.S.A. §316.1934(4).

10) *Georgia : D.W.I. – Code §40-6-391
Jury Trial – Constitution, Bill of Rights, Art. I, §1, para.11.

11) **Hawaii : D.W.I. – Hawaii Revised Statutes §291-4
Jury Trial – *State v. O'Brien*, 704 P.2d 883 (Hawaii 1985).

12) Idaho : D.W.I. – Code §18-8004
Jury Trial – *Miller v. Winstead*, 75 Idaho 262, 270 P.2d 1010 (1954); Constitution, Art. 1, §7.

13) *Illinois : D.W.I. – S.H.A. ch. 95-1/2, §11-501
Jury Trial – S.H.A. ch. 38, par. 103-6; Constitution, Bill of Rights, Art. 1, §8.

14) *Indiana : D.W.I. – Burns Indiana Statutes Annotated §9-11-2-2
Jury Trial – Constitution, Art. 1, §§12, 13.

15) *Iowa : D.W.I. – Code §321.281
Jury Trial – Constitution, Bill of Rights, Art. 1, §10; I.C.A. §813.3, Rule 45; *State of Iowa v. Droste*, 232 N.W.2d 483 (Iowa 1975).

16) Kansas : D.W.I. – K.S.A. §8-1567
Jury Trial – Constitution, Bill of Rights, §10; K.S.A. §22-3404.

17) Kentucky : D.W.I. – K.R.S. §189A.010
Jury Trial – Constitution, Bill of Rights, §11; K.R.S. §29A.270.

18) Maine : D.W.I. – M.R.S.A. 29 §1312-B
Jury Trial – Constitution, Art. 1, §6; *State v. Pineau*, 463 A.2d 779 (Me. 1983).

19) *Maryland : D.W.I. – Ann. Code of Maryland (Transportation) §21-902
Jury Trial – *Fisher v. State*, 504 A.2d 626 (Md. 1986).

20) *Massachusetts : D.W.I. – Massachusetts General Laws Annotated c. 90 §24
Jury Trial – M.G.L.A. c.263 §6; *Commonwealth v. Hesser*, 307 N.E.2d 10 (Mass. 1974) (jury trial on a parking ticket).

21) Michigan : D.W.I. – M.C.L.A. §257.625
Jury Trial – Constitution, Declaration of Rights, Art. 1, §20.

22) Minnesota : D.W.I. – M.S.A. §169.121
Jury Trial – Constitution, Bill of Rights, Art. 1, §6; *State v. Hatlestad*, 347 N.W.2d 843 (Minn. App. 1984).

23) Mississippi : D.W.I. – Code §63-11-30
Jury Trial – Code §9-9-33; *Clark v. State*, 332 So.2d 415 (Miss. 1976).

24) Missouri : D.W.I. – Annotated Missouri Statutes §577.010
Jury Trial – Constitution, Bill of Rights, Art. 1, §§22(A), (B); A.M.S. §546.040.

25) Montana : D.W.I. – M.C.A. §61-8-401
Jury Trial – Constitution, Declaration of Rights, Art. II, §26; M.C.A. §46-16-102; M.C.A. §§46-17-201 and 46-17-403 (Justice and City Court Jury Trial).

26) Nebraska : D.W.I. – Rev. Stat. of Nebraska §39-669.07
Jury Trial – R.S.N. §24-536 (trial by jury); *State v. Nielsen*, 199 Neb. 597, 260 N.W.2d 321 (1977); *State v. Soester*, 199 Neb. 477, 259 N.W.2d 921 (1977); *State v. Young*, 194 Neb. 544, 234 N.W.2d 196 (1975).

27) New Hampshire : D.W.I. – New Hampshire Rev. Stat. Ann. §265:82 and 265:82-b
Jury Trial – Constitution, Bill of Rights, Part 1, Art. 15; Jury trial allowed on *do novo* appeal to superior court. Cf., *State v. Handfield*, 115 NH 628, 348 A.2d 352, app. dismissed, 427 U.S. 909, 96 S.Ct. 3196, 49 L.Ed.2d 1201 (1976); R.S.A. 599:1; R.S.A. 606:8.

28) *New York : D.W.I. – Vehicle and Traffic Law §1192 (Volume 62A)
Jury Trial – Constitution, Bill of Rights, Art. 1, §2; Art. 6, §18; *People v. Dean*, 80 A.D.2d 695, 436 N.Y.S.2d 455 (1981).

29) North Carolina : D.W.I. – Gen. Stat. of North Carolina §20-138.1
Jury Trial – Constitution, Declaration of Rights, Art. 1, §24; Ch. 7A-196 (jury trials); *State v. Mack*, 81 N.C. App. 578, 345 S.E.2d 223 (1986).

30) North Dakota : D.W.I. – North Dakota Century Code §39-08-01
Jury Trial – Constitution, Declaration of Rights, Art. I, §13; *State v. Abrahamson*, 328 N.W.2d 213 (ND 1982); N.D.C.C. §40-18-15.

31) Ohio : D.W.I. – Ohio Revised Code §4511.19
Jury Trial – O.R.C. §2945.17; *City of Mentor v. Giordano*, 9 Ohio St.2d 140, 224 N.E.2d 343 (1967); Constitution, Bill of Rights, Art. 1, §10.

32) *Oklahoma : D.W.I. – Oklahoma Statutes Annotated 47 §11-902
Jury Trial – Constitution, Bill of Rights, Art. 2, §§19 and 20. *Bernhardt v. State*, 719 P.2d 832 (Okla. Cr. 1986).

33) *Oregon : D.W.I. – Oregon Revised Statutes §487.540
Jury Trial – *Brown v. Multnomah County Dist. Court*, 280 Or. 95, 570 P.2d 52 (1977).

34) *Pennsylvania : D.W.I. – Purdon's Pennsylvania Consolidated Statutes Ann. 75 Pa. C.S.A. §3731
Jury Trial – Constitution, Declaration of Rights, Art. 1, §§ 6 and 9; *Commonwealth v. Crum*, 523 A.2d 799 (Pa. Super. 1987).

35) *Rhode Island : D.W.I. – Gen. Laws of Rhode Island §31-27-2
Jury Trial – Constitution, Declaration of Rights, Art. 1, §10, *State v. Vinagro*, 433 A.2d 945 (R.I. 1981) (Jury Trial required for petty misdemeanor).

36) South Carolina : D.W.I. – Code §56-5-2930
Jury Trial – Constitution, Declaration of Rights, Art. I, §14; *State v. Gilliam*, 242 S.E.2d 410 (S.C. 1978) (Magistrate's Court); *State v. Dawkins*, 232 S.E.2d 228 (S.C. 1977) (Circuit Court).

37) *South Dakota : D.W.I. – S.D.C.L. §32-23-1
Jury Trial – *Parham v. Municipal Court, City of Sioux Falls*, 199 N.W.2d 501 (S.D. 1972); Constitution, Bill of Rights, Art. VI, §§ 6 and 7.

38) *Tennessee : D.W.I. – Tennessee Code Annotated §§ 55-10-401 and 55-10-403
Jury Trial – Constitution, Declaration of Rights, Art. 1, §§ 6 and 9; *State v. Morgan*, 598 S.W.2d 796 (Tenn. Crim. App. 1979).

39) *Texas : D.W.I. – Vernon's Ann. Civ. St. art. 6701L-1
Jury Trial – Constitution, Bill of Rights, Art. 1, §§ 10 and 15.

40) Utah : D.W.I. – Utah Code Annotated §41-6-44
Jury Trial – Constitution, Declaration of Rights, Art. 1, §§ 10 and 12; U.C.A. §78-46-5 (jury of 4); *Salt Lake City v. West Gallery, Inc.*, 573 P.2d 1283 (Utah 1978).

41) *Vermont : D.W.I. – Vermont Statutes Annotated T.23 §1201
Jury Trial – Constitution, Declaration of Rights, Chapter I, Arts. 10 and 12; *State v. Becker*, 287 A.2d 580 (Vt. 1972) (jury trial allowed for "noise in the nighttime" offense punishable by maximum $50 fine).

42) *Virginia : D.W.I. – Code §18.2-266
Jury Trial – Constitution, Bill of Rights, Art. I, §8; *Rodgers v. Commonwealth*, 197 Va. 527, 90 S.E.2d 257 (1955); *Gardner v. Commonwealth*, 195 Va. 945, 81 S.E.2d 614 (1954).

43) *Washington : D.W.I. – R.C.W.A. §§ 46.61.502 and 46.61.504
Jury Trial – Constitution, Declaration of Rights, Art. 1, §22; R.C.W.A. §3.66.010 (jury trial).

44)	West Virginia	: D.W.I. – Code §17C-5-2(d) Jury Trial – Constitution, Bill of Rights, Art. 3, §14; W.V.C. § 50-5-8; *Champ v. McGhee*, 270 S.E.2d 445 (WV 1980).
45)	Wisconsin	: D.W.I. – Wis. Stat. §§ 346.63(1) and 346.65 Jury Trial – Wis. Stat. §345.43.
46)	**Wyoming	: D.W.I. – Wyoming Statutes Annotated §31-5-233 Jury Trial – Constitution, Declaration of Rights, Art. 1, §§ 9 and 10; *City of Casper v. Cheatam*, 739 P.2d 1222 (Wyo. 1987); *Lapp v. City of Worland*, 612 P.2d 868 (Wyo. 1980).

NO JURY TRIAL

1)	Nevada	: Case at bar.
2)	Louisiana	: D.W.I. – L.S.A. – R.S. 14.98 Jury Trial – not available – L.S.A. C.Cr.P. art. 779.
3)	District of Columbia	: D.W.I. – Code §40-716 Jury Trial – not available – Code §16-705; *Alston v. United States*, 509 A.2d 1129 (D.C. App. 1986).
4)	New Mexico	: D.W.I. – NMSA §66-8-102 Jury Trial – not available – NMSA §34-8A-5; *Vallejos v. Barnhart*, 102 N.M. 438, 697 P.2d 121 (1985); *Hamilton v. Walker*, 65 N.M. 470, 340 P.2d 407 (1959).

5)	New Jersey	: D.W.I. – N.J.S.A. 39:4-50 Jury Trial – not available – N.J.S.A. 2C:1-4; *State v. Zoppi*, 483 A.2d 844 (N.J. Super. L. 1984).

FEDERAL STATUTE

18 U.S.C.A. §1	: 6 months incarceration and fine of $5000

APPENDIX "B"

Table 1.56

Criminal sanctions, administrative licensing actions, and related actions for driving while intoxicated offenses

By jurisdiction, as of Janury 1986

	Criminal Sanctions						Administrative licensing actions			Other actions		
Jurisdiction	Term of imprisonment	Mandatory minimum Term of imprisonment	Fine	Mandatory minimum fine	Community service	Restitution	Pre-conviction licensing action	Suspension or revocation	Mandatory minimum term of withdrawal	Alcohol education or treatment program	Education or treatment program as alternative to sanctions	Vehicle impoundment confiscation
Alabama	S	S[a]	S		S[a]	(b)	S[a]	S	S	S		
Alaska	S	S	S		S	S	S	S		S		S
Arizona	S	S	S	S	S	(b)	S	S	S	S		
Arkansas	S		S		S			S	S	S		S
California	S	S	S	S		(b)		S	S	S		S
Colorado	S	S[a]	S		S		(c)	S	S[d]	S	S	
Connecticut	S	S	S		S	S	(e)	S	S	S	S	
Delaware	S	(f)	S			S	S	S	S	S		S[g]
District of Columbia	S		S				S	S	S			
Florida	S	S[a]	S		S			S	S[h]	S		
Georgia	S	S[a]	S		S[a]			S	S	S		
Hawaii	S	S[a]	S		S			S	S	S		
Idaho	S	S[a]	S			(b)	S	S	S[a]	S		
Illinois	S	S[a]	S		S[a]	S	S	S				
Indiana	S	S[a]	S		S[a]		S	S	S	S[a]	S[a]	
Iowa	S	S[a]	S	S	S[a]	S	S	S		S[a]		
Kansas	S	S	S		S[a]	S		S	S	S		
Kentucky	S	S[a]	S		S[a]	S	S	S	S	S	S	
Louisiana	S	S[a]	S				S	S	S[a]	S	S	
Maine	S	S	S	S			S	S			(l)	
Maryland	S	S[a]	S		S[a]	S		S		S	S	
Massachusetts	S	S[a]	S		S			S	S	S	S[m]	

Jurisdiction	Criminal Sanctions						Administrative licensing actions			Other actions		
	Term of imprisonment	Mandatory minimum Term of imprisonment	Fine	Mandatory minimum fine	Community service	Restitution	Pre-conviction licensing action	Suspension or revocation	Mandatory minimum term of withdrawal	Alcohol education or treatment program	Education or treatment program as alternative to sanctions	Vehicle impoundment confiscation
Michigan	S		S		S	S		S	S	S		
Minnesota	S		S			S	S	S	(n)	S		
Mississippi	S	(o)	S	S	S		S	S	S	S		
Missouri	S	S	S		S	S	S	S	S	S		
Montana	S	S	S					S	S	S	S	
Nebraska	S	S	S					S	S	S		
Nevada	S	S	S		S	S	S	S	S	S	S	
New Hampshire	S	S	S	S†				S	S	S		
New Jersey	S	S	S		S			S	S	S		
New Mexico	S	S	S			S	S	S	S	S		
New York	S		S	S			S	S	S	S	S	
North Carolina	S	S	S		S		S	S	S			(g)
North Dakota	S	S	S	S	S	S	S	S	S	S		
Ohio	S	S	S				S	S	S	S	S	
Oklahoma	S		S		S	S	S	S	S	S		
Oregon	S	S	S		S		S	S	S	S	S	S
Pennsylvania	S	S	S	S	S	S		S	S	S	S	
Puerto Rico			S					S		S	S	
Rhode Island	S	S	S	S	S	S	S	S	S	S		
South Carolina	S	S	S	S	S			S	S	S	S	
South Dakota	S		S			S		S	S			
Tennessee	S	S	S	S	S	S	S	S	S	S		
Texas	S	S	S		S			S		S		S
Utah	S	S	S	S	S	S	S	S	S	S		
Vermont	S	S	S		S			S	S	S		
Virginia	S	S	S					S	S	S	(n)	
Washington	S	S	S	S		S		S	S	S		
West Virginia	S	S	S	S			S	S		S	(y)	
Wisconsin	S		S			S	S	S	S	S		S
Wyoming	S	S	S				S	S	S	S	S	

Note: See Note, table 1.53. "The sanctions listed for convictions of alcohol driving offenses. . .are those specified by statute. If a sanction is not specified by law. . ., it is not listed" (U.S. Department of Transportation, National Highway Traffic Safety Administration, Digest of State Alcohol-Highway Safety Related Legislation, January 1983 (Washington, D.C.: U.S. Department of Transportation, 1983), (pp. 1, 2)). "Term of imprisonment" refers to both jail sentences and prison sentences. " The term 'mandatory sanction' means either a criminal sanction or an administrative licensing action which must be imposed by either a court or administrative agency" (Source, p. 1-1). "Pre-conviction licensing action" refers to provisions which enable the State licensing agency to suspend a license prior to conviction based on blood alcohol concentration level. "Mandatory minimum term of withdrawal" refers to a mandatory minimum term of either license suspension or revocation. Because of variation among the jurisdictions within categories of sanctions, e.g., terms of imprisonment or amounts of fines, the Source document as well as individual jurisdictions' statutes should be consulted. In the table, "S" indicates that such a provision is provided expressly by statute. Statutes should be consulted for the full text and meaning of specific provisions.

[a] Not for first offense but may apply to second and/or subsequent offenses.

[b] May be required where involved in accident causing damages, injury, or death.

[c] Administrative per se with a blood concentration level of 0.15 percent; the period of license revocation is 1 year.

[d] Where there has been a previous conviction or if defendant is under 21 years of ago.

[e] Police may take and hold a drivers' license for 24 hours if the driver has a blood alcohol concentration level of 0.10 percent or more.

[f] These minimum sanctions may not be suspended by the Court; the law is silent as to prohibiting the Court from placing a person on probation.

[g] Yes, but only if convicted of driving with suspended or revoked license.

[h] First offense only.

[i] In lieu of fine.

[j] In lieu of imprisonment for first offense and in lieu of fine for second and subsequent offenses.

[k] In lieu of fine or imprisonment except for injury related driving while intoxicated offenses.

[l] After two-thirds of license suspension period has passed, offender may be issued a license if they have completed an alcohol education/treatment program. Special provisions apply.

[m] If defendant consents.

[n] A limited license may be issued for employment purposes or attendance at an alcohol treatment program.

[o] The law does not specifically prohibit suspending or placing persons on probation for the minimum imprisonment term.

[p] In lieu of imprisonment.

[q] Applies to all offenses, however, injury must have been intentionally inflicted for the victim to be compensated.

[r] Administrative per se with a blood alcohol concentration level of 0.13 percent; the period of revocation varies with number and type of alcohol related convictions.

[s] Except for the driving while intoxicated death or bodily injury offense.

[t] Where there is serious bodily injury or a 0.20 percent blood alcohol level.

[u] To be paid by the defendant if a sentence is either suspended or deferred.

[v] Where there has been a previous conviction. Also, license may be seized if the blood alcohol concentration level is 0.10 percent or above.

[w] May be imposed if defendant is an alcoholic or suffering from acute alcohol intoxication.

[x] Administrative per se with a blood alcohol concentration of 0.08 percent.

[y] Generally no; but there are limited alternatives.

Sources: U.S. Department of Transportation, National Highway Traffic Safety Administration, Digest of State Alcohol-Highway Safety Related Legislation, 4th ed., March 1986 (Washington, DC: U.S. Department of Transportation, 1986), pp. 3-1–3-379. Table adapted by SOURCEBOOK staff.

APPENDIX "C"
METHOD OF MISDEMEANOR DISPOSITION IN REPORTING STATE TRIAL COURTS IN 1985[1]

State and Court	Jurisdiction	Total dispositions	Trial	
			Jury	Nonjury
Alaska:				
District	L	25,689[j]	442[j]	239[j]
Arizona:				
Municipal	L	100,587	232	4,186
Justice of the Peace	L	29,861	7	2,079
California:				
Municipal	L	541,614[j]	3,512[j]	6,129[j]
Justice	L	43,461[j]	337[j]	1,657[j]
Colorado:				
County	L	29,788[j]	294[j]	787[j]
Connecticut:				
Superior	G	116,916[j]	229[j]	523[j]
Delaware:				
Superior	G	4,142[j]	340[j]	36
Court of Common Pleas	L	14,909	103[a]	N/A
Florida:				
Circuit	G	160,112[j]	3,123[j]	618[j]
County	L	239,754	1,023	5,461
Hawaii:				
Circuit	G	207[i]	317[j]	165[j]
District	L	24,450[i]	N/A	N/A

[1] Statistics provided by "The Court Statistics and Information Management Project of the National Center for State Courts, 1988." 300 Newport Avenue, Williamsburg, Virginia 23187-8798.

State and Court	Jurisdiction	Total dispositions	Trial	
			Jury	Nonjury
Idaho:				
District	G	34,258[j]	N/A	N/A
Indiana:				
Superior and Circuit	G	18,171[ij]	14[ij]	399[ij]
	(County Court function)		11[j]	938[j]
City and Town	L	26,856[ij]	N/A	5,752[ij]
Municipal Court of Marion Cty	L	44,831[j]	73[j]	18,469[j]
County	L	38,533[ij]	94[ij]	2,449[ij]
Kansas:				
District	G	16,250[j]	207[j]	548[j]
Michigan:				
Circuit	G	43,619[j]	2,312[j]	2,273[j]
District	L	187,220[ij]	1,608[ij]	7,939[ij]
Municipal	L	1,949[ij]	2[ij]	389[ij]
Missouri:				
Circuit	G	2,438 (circuit judges)	182	707
		58,772 (Assoc. circuit judges)	N/A	3,995
North Carolina:				
Superior	G	30,366[j]	1,456[j]	N/A
Ohio:				
Municipal	L	260,751[j]	760[j]	10,201[j]
County	L	24,309[j]	125[j]	1,841[j]
Oklahoma:				
District	G	29,631[j]	183[j]	862[j]

State and Court	Jurisdiction	Total dispositions	Trial	
			Jury	Nonjury
Pennsylvania:				
Court of Common Pleas	G	91,482[j]	3,571[j]	6,034[j]
District Justice	L	298,574[j]	N/A	51,533[j]
South Carolina:				
Magistrate	L	104,788	233[j]	59,488[j]
South Dakota:				
Circuit	G	13,736[ij]	115[ij]	105[ij]
Texas:				
District	G	12,666	41	29[j]
Municipal	L	350,699[j]	764[j]	102,450[j]
Justice of the Peace	L	347,822[j]	591[j]	40,244[j]
County-Level	L	222,870[j]	2,236[j]	2,598[j]
Utah:				
District	G	3,716[j]	276[j]	100[j]
Circuit	L	28,974[ij]	361[j]	5,550[j]
Justice of the Peace	L	34,399	23	1,724
Vermont:				
District	G	17,335[j]	203	97[j]
Virginia:				
Circuit	G	23,322[j]	758	6,750
West Virginia:				
Circuit	G	1,872	67	N/A
Wisconsin:				
Circuit	G	29,869	297	343
District of Columbia:				
Superior	G	22,943	694	571
Puerto Rico:				
Superior		7,773[j]	61	1,734[j]
District		37,830	N/A	1,829[j]

Footnotes:

N/A = Data are not available.

[a] Court Jurisdiction:
Delaware – Court of Common Pleas – Jury trials are not handled in the New Castle County Court of Common Pleas; jury trials for criminal cases are held in Kent and Sussex Counties. If a jury demand is made in New Castle County, the case is transferred to the Superior Court.

[i] Data are incomplete:
Colorado – County Court – Data do not include figures from Denver County Court (2nd District).
Hawaii – Circuit Court – Criminal data do not include reopened prior cases included in the unclassified civil category.
– District Court – Misdemeanor data do not include some criminal cases that could not be separated from the ordinance violation cases.
Indiana – Superior and Circuit Court – There were 13,546 dispositions that could not be identified by case type and are not include in these data.
These cases include matters where an adjudication is made, but the formalities of a trial are not involved.
– City and Town Court – There were 1,153 disposed cases that were not identified by category. These figures are not included in these data.
Total trial data do not include jury figures.
– County Court – There are 3,814 disposed cases that could not be identified by case type and are not included in these data. These cases include matters where an adjudication is made, but the formalities of a trial are not involved.
Michigan – District Court – Figures do not include data from the City of Dearborn. Two other courts did not report data for the entire year.
– Municipal Court – Municipal courts for Grosse Pointe Municipal and Grosse Pointe Shores did not report data.
South Carolina – Magistrate Court – Data do not include acquittals.
South Dakota – Circuit Court – Misdemeanor data do not include Class 2 misdemeanors or Class 1 preliminary hearings.
Texas – District Court – Nonjury criminal trial data do not include guilty pleas accepted during a bench trial.
– Municipal Court – Data represent 7,473 reports out of a possible 10,092 (reporting rate of 74 percent).
– Justice of the Peace Court – Data represent 8,428 Justice of the Peace Court monthly reports out of a possible 11,616; a reporting rate of 73 percent.
Utah – Circuit Court – Felony/misdemeanor disposed data do not include criminal traffic cases.

[j] Explanation of data:
Alaska – District Court – Misdemeanor data include ordinance violation, misdemeanor traffic cases and DWI/DUI cases.
California – Municipal Court – Misdemeanor data include some ordinance violation cases.
– Justice Court – Misdemeanor data include some ordinance violation cases.
Colorado – County Court – Misdemeanor data include de novo criminal appeals.
Connecticut – Superior Court – Felony/misdemeanor data include Part D felony cases and ordinance violation cases.
Delaware – Superior Court – Felony/misdemeanor disposed data include appeals that are tried do novo.
Florida – Circuit Court – Felony/misdemeanor data include DWI/DUI and miscellaneous criminal cases. All defendants were charged with at least one felony, but may also be charged with misdemeanors, DWI/DUI and miscellaneous criminal violations.
Hawaii – Circuit Court – Misdemeanor data include felony cases.
Idaho – District Court – Misdemeanor data include ordinance violation cases.
Indiana – Superior and Circuit Court – Misdemeanor data include DWI/DUI cases.
– City Court and Town Court – Misdemeanor data include DWI/DUI cases.
– Municipal Court of Marion County – Misdemeanor data include DWI/DUI cases.
– County Court – Misdemeanor data include DWI/DUI cases.
Kansas – District Court – Misdemeanor data include appeal cases from the lower courts.
Michigan Circuit Court – Felony/misdemeanor data include 3rd offense DWI/DUI cases.
– District Court – Misdemeanor data include ordinance violations.
– Municipal court – Misdemeanor data include ordinance violation cases.
North Carolina – Superior Court – Misdemeanor data include criminal appeal disposed cases.

Ohio – Municipal Court – Misdemeanor data include appeal and ordinance violation cases.
- County Court – Misdemeanor data include criminal appeals and ordinance violation cases.

Oklahoma – District Court – Misdemeanor data include some miscellaneous criminal, all criminal appeal, and all ordinance violation cases.

Pennsylvania – Court of Common Pleas – Felony/misdemeanor data include DWI/DUI and criminal appeal cases.
- District Justice Court – Triable misdemeanor data include ordinance violation cases.

South Carolina – Magistrate Court – Data include jury acquittals.

South Dakota – Circuit Court – Misdemeanor data include some criminal appeals cases. Misdemeanor disposed data include DWI/DUI disposed cases.

Texas – District Court – Pretrial guilty pleas include those received during bench trials. In addition to jury and nonjury trials, there were also 6 directed verdicts which are not reflected in the total.
- County Level Court – Misdemeanor disposed data include criminal and other criminal appeals cases. Data also include criminal and traffic appeals cases from the lower courts in Dallas County. In addition to jury and nonjury trials, there were also 58 directed verdicts which are not reflected in the total.

Utah District Court – Felony/misdemeanor data include criminal appeals cases.
- Circuit Court – Felony/misdemeanor data include some miscellaneous criminal cases.

Vermont – District Court – Misdemeanor data include ordinance violation cases and DWI/DUI cases.

Virginia – Circuit Court – Misdemeanor data include criminal appeals and ordinance violation cases.

Puerto Rico – Superior Court – Appeals of trial court cases are included according to the case type for caseload inventories, trial and disposition data.
- District Court – Misdemeanor data include ordinance violation cases.

APPENDIX "D"

DWI/DUI Jury Trials in State Trial Courts, 1985[1]

State/Court	Jurisdiction	DWI/DUI Cases Disposed	Number of Cases Disposed by Jury Trial	Percentage of Cases Disposed by Jury Trial
HAWAII				
Circuit Court[2]	G	22	1	4.5%
IDAHO				
District Court	G	14,201	1,374 (includes Bench trials)	9.7%
KANSAS				
District Court	G	4,828	79	1.6%
OHIO				
Municipal Court	L	83,923	567	.7%
County Court	L	13,993	85	.6%
OKLAHOMA				
District Court	G	15,447	96	.6%
TEXAS				
District Court	G	3,530 (more than first offense)	37	1%
County-Level	L	149,330	1,259	.8%
UTAH				
Circuit Court	L	6,990	91	1.3%
Justice of the Peace	L	4,909	80	1.6%
WEST VIRGINIA				
Circuit Court	G	311	16	5.1%
WISCONSIN	G	13,517	323	2.4%

[1] Statistics provided by "The Court Statistics and Information Management Project of the National Center for State Courts, 1988." 300 Newport Avenue, Williamsburg, Virginia 23187-8798.

[2] Clearly under-reported.